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PRODUCTS**

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**WI-FI,
MOULD**

**SCENTED
PRODUCTS**

**FERTILIZERS,
PESTICIDES**

WHEN
THE ENVIRONMENT
MAKES YOU ILL

Need to
understand,
need
to act

JURISPRUDENCE GUIDE

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JURISPRUDENCE

GUIDE

Relating to claims for environmental sensitivities made in accordance with the law on occupational accidents and illnesses (Loi sur les accidents du Travail et les maladies professionnelles – LATMP), CSST (Quebec workers' compensation board) - May 2012.

Workers who develop an environmental sensitivity arising from exposure at their workplace can deposit a claim with the CSST according to the *law on occupational accidents and illnesses*.

Important: If you are still able to work, see “**Right to Reasonable Accommodation**”.

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Are all working people covered by the CSST?

To benefit from the law¹ on occupational accidents and illnesses (LATMP), you must have a “worker” status, as defined by this law! Independent workers, who actually work for themselves, are not eligible.

What is the deadline for depositing a claim with the CSST?

You have up to six months to make a claim. If making a claim for a work-related illness rather than an accident (see further), this time starts from the moment the illness is known to be work-related (i.e., work contributed significantly to the development of the illness).

With an illness like environmental sensitivity, the notion of knowing that it is work-related must be interpreted in a restrictive way, because “it would be unfair and infringe upon workers’ rights to demand that they make a claim within six months of having the slightest doubt that their symptoms are work-related since many doctors can neither give an accurate diagnosis or the possible causes of the illness.”²

- **Val d’Or School Board vs. Jean-Guy Moreau** (1999) CLP552 (Pierre Prigent)

This worker was employed by the school board as a handyman and, as such, was in contact with all the substances and solutions required for laboratory work. In 1991, he started seeing his doctor for recurring sinusitis and headaches. There followed a series of medical consultations with various specialists until he sent a medical certificate to the CSST on October 7, 1996. The commission of occupational injuries (Commission des lésions professionnelles – CLP) had to determine if the claim for work-related illness was submitted within the allowed time. Considering the complex process of diagnosing environmental sensitivity, the CLP disregarded the predominant jurisprudence and interpreted “knowing” as the result of the intellectual process allowing the worker to make a very probable link between the symptoms and his work. The CLP decided that the worker could not come to such a conclusion before October 7, 1996. His claim was therefore accepted.

¹ See the definition of “worker” in Article 2 of the LATMP as well as Article 9. Some working people, such as entrepreneurs, can subscribe optional personal coverage with the CSST by paying for the insurance themselves.

² Val d’Or School Board and Jean-Guy Moreau, (1999) CLP552 (Pierre Prigent), par. 38.

If more than six months have expired since you stopped working due to environmental sensitivities, is it still worth making a claim?

It is possible to be exonerated from failure to make a claim within the allotted time. You must show that you had reasonable justification for not having met the deadline. Simply not knowing your rights is not deemed sufficient justification.

- ***Desgagnés Marine Cargo Inc. vs. Hélène Leclerc***, 2008 QCCLP 5763 (Claude-André Ducharme) **conf. *Desgagnés Marine Cargo Inc. vs. CLP***, 2009 QCCS 579

This woman worked as navigation supervisor on a ship and was in contact with toxic cleaning products during an incident that occurred in 2006. She had previously worked on ships where she was exposed to toxic products that brought on similar symptoms to those experienced in 2006 and had been told at the time that her symptoms were work-related. However, she decided not to make a claim in 1999 because she wanted to continue working and sincerely believed she would no longer have any problems if her new job did not expose her to toxic products. She specifies that she made her claim reluctantly because she is now unable to continue working. After reviewing the proof on file, the CLP judged that the worker's arguments were reasonable justification for exonerating her from the consequences of not having met the deadline required by law for depositing a claim, and her claim was deemed receivable.

What is required to make a claim from the CSST?

Most important is a medical report duly completed by a physician who provides a diagnosis and links the illness to the person's work conditions. Another CSST form must also be completed by the applicant.

Since a diagnosis of environmental sensitivities is still subject to medical controversy, can such a diagnosis hinder the acceptance of your claim for CSST compensation?

According to decisions rendered by the CLP, the following diagnoses do not preclude their being considered work-related: environmental sensitivity³, multiple chemical sensitivity⁴, sensitivity to solvents⁵, rhinitis due to chemical sensitivity⁶, headaches, spasms on the left side of the body, neuropathic pain, left-side brachialgia following exposure to chemical products⁷ and intolerance to chemical products⁸. That being said, these claims have often been accepted by the Appeals Tribunal rather than upon initial request, so the applicant must tolerate delays and suffer additional stress.

- **Desgagnés Marine Cargo Inc. vs. Leclerc**, 2008 QCCLP 5763 (Claude-André Ducharme), *conf.* **Desgagnés Marine Cargo Inc. vs. CLP**, 2009, QCCS 579

This worker was a quartermaster on a ship and was thus exposed to many chemical products such as glue, oil paint, epoxy resin, asphalt, petroleum-based products and strong cleaning products. She asked that her diagnosis of multiple chemical sensitivity (MCS) be recognized as work-related. The CLP first noted that MCS cannot give rise to any application provided by law. However, it also took into account the fact that almost all of the worker's doctors believed her symptoms – frequent headaches, great fatigue, intermittent dizziness and nausea – were related to her exposure to chemical products at work. The Commission concluded that the applicant's work history could be compatible with a state of sensitivity and also noted that even though she also had problems with non-toxic products outside the workplace (perfumes, home cleaning products), that did not prevent her illness from being work-related.

Further to a request for judicial review, the Superior Court concluded that the Commission's decision was reasonable. The worker did suffer from MCS that was directly related to the specific risks associated with her job as quartermaster, and she therefore had a work-related illness.

3 Coderre and Public Works and Services, 2008, QCCLP 2566 (Marie Langlois)

4 Desgagnés Marine Cargo Inc. vs. Leclerc, 2008, QCCLP 5763 (Claude-André Ducharme), *conf.* Desgagnés Marine Cargo inc. vs. CLP, 2009, QCCS 579; Moreau and Commission scolaire de Val-D'Or, C.L.P.E. 2002LP-44 (Pierre Prigent). Same diagnosis as in Carter and Primeteck Electronics Inc., 2002 AZ-01307413 (Eric Ouellet), *conf.* (lawsuit on other questions) CLP 140851-62-006-R, March 6, 2003, Mireille Zigby)

5 Serigrafitti inc, and Cayouette, CLP 148264-71-0010 and 148802-71-0010, Feb. 13, 2002 (Mireille Zigby)

6 Lemoy and Litho Associates Ltd., (2003) C.L.P. 634 (Lina Crochetière)

7 Aubin and Systèmes de Sécurité Paradox Itée, 2009 QCCLP 6145 (Robert Daniel)

8 Morneau and Bombardier Aéronautique inc., 2010 QCCLP 2461 (Jean-François Martel)

- **Moreau vs. Val-D'Or School Board**, C.L.P.E. 2002LP-44 (Pierre Prigent)

This worker was employed by the school board as handyman and, as such, was in contact with all the substances and solutions required for laboratory work. He asked that his doctor's diagnosis of multiple chemical sensitivity (MCS) be recognized as an illness linked to the specific risks of his job. The Commission considered itself bound by this diagnosis because it was not contested by other doctors. It also acknowledged that the evidence of the worker's exposure to irritant chemical products for twenty years, without any protection, was not contested. Based on the medical literature submitted by the worker, the Commission also noted that his symptoms – fatigue, exhaustion, headaches, dizziness, vertigo as well as concentration and memory problems – were similar to those of other people with a diagnosis of MCS. The Commission therefore recognized that even though this diagnosis was little known and controversial in the medical community, the factual and overwhelming evidence sufficed to acknowledge the occupational nature of the worker's illness.

- **Serigrafitti inc. vs. Cayouette**, CLP 148264-71-0010 and 148802-71-0010, February 13, 2002 (Mireille Zigby)

This worker was a drying attendant and general helper for a clothing print shop where she was exposed to solvents. She was diagnosed with migraine headaches and made a CSST claim so that her sensitivity to solvents would be recognized as being the cause of her migraines. The Commission judged that, according to the evidence, the worker was habitually exposed to solvent fumes in her workplace. It also noted that the worker's migraines always occurred at work and were linked to the strong fumes emanating from the solvents. In addition, the Commission took into account the medical literature submitted, which showed a link between migraines and exposure to certain solvents. The Commission therefore acknowledged the occupational nature of the illness, that is, her sensitivity to solvents resulting in migraines, and accepted her claim for a work-related illness.

- **Lemoy vs. Litho Associated Ltd.,** (2003) C.L.P. 634 (Lina Crochetière)

This worker was secretary-receptionist for a printing company. She asked that her diagnosis of rhinitis due to chemical sensitivities be recognized as an occupational illness contracted at work, specifically by her exposure to chemical products on the job. Based on the CSST inspector's report of traces of toluene found in the air near the applicant's work station as well as the results of several of her medical reports, the Commission judged that the worker had in fact been exposed to the chemical toluene. Though the employer argued that the detected levels were very low, the Commission accepted the medical literature submitted as evidence, which showed that chemical sensitivity syndrome can result from minimal exposure or from exposure to levels of chemical products below accepted standards. The Commission also acknowledged the causal link between rhinitis due to chemical sensitivity, which was diagnosed in this worker's case, and the specific risk associated with her exposure to toluene at her workplace, because among other things, according to the evidence provided, her symptoms increased at work and decreased away from it. The Commission also noted that all of the worker's symptoms – irritation of mucous membranes, eyes and respiratory tract as well as headaches – could not be explained by her allergies alone, regardless of the employer's declarations, and that the worker's allergies could not be considered an obstacle to recognizing her illness as being work-related.

- **Coderre vs. Public Works and Services,** 2008, QCCLP 2566 (Marie Langlois)

This worker was a computer technician. For several months, she was exposed to diesel fumes emanating from machinery working on the street right under her office. She deposited a claim with the CLP, saying that her environmental sensitivities were an occupational illness resulting from a work accident. The Commission first noted that this diagnosis was made by three of the physicians who examined the worker. Since the diagnosis was not contested by the employer, the CLP was bound by it. In addition, the Commission acknowledged the credibility of the evidence showing that the worker was exposed to diesel fumes and that this exposure could be likened to a sudden and unpredictable event. Since the worker's doctor testified that her environmental sensitivities were caused by this exposure, and since no credible evidence to the contrary was submitted, the Commission accepted the claim. The Commission also noted that the worker being a smoker did not constitute sufficient proof that her symptoms were not work-related.

- ***Aubin vs. Systèmes de Sécurité Paradox Ltd.***, 2009 QCCLP 6145 (Robert Daniel)

This worker was an electronics technician apprentice and had to use an accelerant (dimethyl-p-toluidine) and glue (leaded cyanoacrylate) at work. She requested that her diagnosis of headaches, left-side spasms, neuropathic pain and left-sided brachialgia due to exposure to glue and accelerant fumes be recognized as work-related. The CLP noted that despite the lack of scientific proof of the toxin levels to which the worker was exposed and the lack of medical evidence showing a direct link between the exposure and her symptoms, the circumstances described constituted precise, serious and concordant facts and justified the status of presumption of fact. According to the CLP, this established a strong probability of there being a link between the worker's exposure and her symptoms, and her claim was therefore accepted.

- ***Morneau vs. Bombardier Aéronautique inc.***, 2010 QCCLP 2461 (Jean-François Martel)

This woman was a plastics worker and as such was exposed daily to epoxy resin and various other constituents. She deposited a claim for occupational illness, saying she was sensitive and intolerant to chemical products due to being in contact with epoxy resin and its components. The Commission acknowledged that the evidence showed a strong link between the woman's exposure at work and her illness, both time wise and location wise. Her claim was therefore accepted. In addition, even though the employer argued that the worker had symptoms even when she wasn't exposed to the said toxins, the Commission concluded that in light of her diagnosis of sensitivity, it was not surprising that she now had symptoms every time she was exposed in her personal life to a chemical product, and allergen or another irritant.

Is it only recently that the CSST accepts claims for environmental sensitivity?

Before 2002, many of the claims made by people diagnosed with environmental sensitivity were rejected. However, in 2002, the Québec Court of Appeals came to two important decisions regarding compensation for people with a controversial illness, that is, fibromyalgia. The court issued an important warning: tribunals should beware of imposing too heavy a burden of proof on people with a new or controversial illness! This rule applies to people suffering from environmental sensitivities.

- **Chiasson vs. Reitmans**, (2002) CLP 875 (CAQ)

This woman, the assistant-manager of a clothing store, had an accident at work that resulted in the diagnosis of a minor intervertebral dislocation of the upper back, an accident which was recognized as being work-related. Two years later, she asked that a new diagnosis of post-traumatic fibromyalgia be accepted as a direct consequence of her work accident. The Appeals Court ruled that the CSST decision to refuse this claim was obviously unreasonable because instead of basing their decision on the overwhelming evidence, the decision-makers refused to consider the causal relationship of the illness due to the lack of direct scientific evidence of the link between fibromyalgia and the accident. "Even when science cannot explain the etiology of an illness or the means by which the symptoms are produced, medical expertise concluding there is a probable link between the illness and the accident can suffice to show a causal relationship." The worker's claim was therefore accepted.

- **Viger vs. SAAQ** (2000) RJQ 2209 (CAQ)

The applicant was injured in a car accident and received a diagnosis of post-traumatic fibromyalgia. She later requested an extension of the income replacement benefits she had been receiving since the accident. The Appeals Court ruled that the refusals of the SAAQ (Quebec Auto Insurance Board) and subsequently the Tribunal administratif du Québec (Quebec Administrative Tribunal) were obviously unreasonable since these courts confused scientific causality and legal causality. The judges noted that the applicant needed convincing proof that the cause of her fibromyalgia was the car accident. The previous authorities had rejected her request because the scientific cause, or etiology, of fibromyalgia is insufficiently understood by the medical community. However, the judges concluded that, according to the evidence presented, and despite the unknown etiology of fibromyalgia in other cases, it was known in this case that the car accident was probably the triggering event leading to the symptoms and diagnosis given. The claim was therefore accepted.

Any decisions rejecting a claim for environmental sensitivities due to the scientific uncertainty around the illness no longer have any value as precedent if they were rendered before the 2002 Appeals Court decisions regarding Chiasson and Reitmans. These decisions are obsolete and should not be reproduced by tribunals.⁹

They are presented here nonetheless to allow you to be vigilant in case an employer invokes them in an attempt to reject your claim. The following decision illustrates the kind of reasoning that the Appeals Court wishes tribunals to avoid:

- ***Rolko vs. Department of National Defence***, (1994) C.A.L.P. 1341 (Margaret Cuddihy)

This worker, a metrology technician, had various symptoms since he was exposed to ethylene glycol. He was diagnosed with multiple chemical sensitivity (MCS). Though it is bound by this diagnosis, the CALP found it relevant to question it due to the methods used to reach it, which were found inadequate insofar as the validity of the tests done and the elimination of other possible causes of the illness, the illness itself not yet being unanimously accepted by the scientific community. Even though it acknowledged the diagnosis, the CALP judged that the illness could not have been caused by the ethylene fumes due to the low concentration levels to which the worker was exposed.¹⁰

Here are other decisions rendered prior to the two major decision of the Appeals Court regarding the burden of proof for new illnesses (they are therefore more or less relevant today):

- *Montreal Urban Community vs. Duhamel*, CALP No 51506-60-9306, 95-08-16 (Louise Thibeault);
- *Beaupré vs. Cie de papier Raymond*, 1826-03-9005, CALP, December 18, 1992 (René Ouellet);
- *Girard vs. Hydro-Québec*, (1993) CALP 720-729 (Élaine Harvey);
- *Girard vs. Opération Centralisé*, 39563-60-9205 and 53172-60-9308, CALP, August 16, 1995 (Louise Thibeault);
- *Bourque vs. Sico Inc.*, 84277-62-9612, 84278-62-9612, CALP, June 4, 1997 (Fernand Poupart);
- *Dubreuil vs. Maisonneuve-Rosemont Hospital*, 67993-60-9503, CALP, July 2, 1997 (Joëlle L'Heureux);
- *Jacobs vs. NATPRO Inc.*, 66511-04-9602, March 12, 1998 (Michèle Carignan), request for review rejected, CLP 1999-04-21, 70062-04-9506-R and 66551-04-9502-R (Carole Lessard);
- *Vasseur vs. City of Montreal*, CLP 92134-72-9710, December 22, 1998 (Lina Crochetière);
- *Cloutier vs. Filature Lemieux*, 109467-03B-9901, CLP, October 13, 1999 (Pierre Brazeau).

⁹ See, among others, K Lippel 2008 Controversial illnesses.

¹⁰ Sourced from LIPPEL, Katherine, "The concept of occupational injury - jurisprudential analysis", Editions Yvon Blais, 2002, Cowansville, Québec, p.284

When you have been diagnosed with environmental sensitivities, should you always appeal an initial CSST decision to refuse your claim?

The CSST can accept claims for environmental sensitivities upon initial request, and the employer sometimes does not appeal this decision. In other cases, applicants must go to a hearing in front of the CLP to have their claim accepted or to contest the employer's appeal of a decision in their favour.

On what basis are claims accepted for work-related environmental sensitivities?

Depending on the situation, a claim for work-related environmental sensitivities can be accepted either as an illness due to a work-related accident, or as an occupational illness, or as a relapse of a work-related illness that has been recognized previously. Regardless of the basis upon which the claim is accepted, the person is entitled to the same benefits.

A claim can be accepted as work-related based on the theory of microtraumas. According to this theory, a series of events, such as exposure to toxins even at levels or intensities that do not provoke reactions in others, can, when taken altogether, constitute a sudden unpredictable event, as required by law in order to be considered a work-related accident.

- **Aubin vs. Systèmes de Sécurité Paradox Ltée**, 2009 QCCLP 6145 (Robert Daniel)

The Commission noted that every one of the worker's exposures to the products tested previously, while she was at work for her employer, was a sudden, unpredictable event that caused symptoms making her sick. The Commission ruled that the worker had a work-related accident and the claim was accepted.

- **Coderre vs. Public Works and Services**, 2008 QCCLP 2566 (Marie Langlois)

The Commission noted that the evidence showing the worker was exposed to diesel fumes was credible and that this exposure could be likened to a sudden, unpredictable event according to the definition of a work-related accident. Since the worker's doctors testified that her environmental sensitivities arose from this exposure and since no credible proof to the contrary was submitted, the Commission accepted the worker's claim that she had an occupational illness due to a work-related accident.

Even though one of the most convincing elements of proof is the time between exposure to a toxic substance at work and the appearance of symptoms, the fact that these symptoms do not entirely disappear when the worker is no longer exposed to the toxic products or that he reacts to other substances that did not initially cause his symptoms do not constitute an obstacle to the acceptance of a claim.

- ***Desgagnés Marine Cargo Inc. vs. Leclerc***, 2008 QCCLP 5763 (Claude-André Ducharme), conf. ***Desgagnés Marine Cargo Inc. vs. CLP***, 2009 QCCS 579

The Commission came to the conclusion that the worker's reaction to non-toxic products away from work (perfumes, cleaning products) does not prevent her illness from being work-related because her symptoms started appearing after the problems she had at work.

- ***Morneau vs. Bombardier Aéronautique Inc.*** 2010 QCCLP 2461 (Jean-François Martel)

Though the employer argued that the worker had symptoms even when she wasn't being exposed to the identified toxins, the Commission concluded that in light of the diagnosis of environmental sensitivities, it was not surprising that the worker now had symptoms every time she was exposed to a chemical product, an allergen or other irritant product in her personal life. The Commission noted that the distinctive feature of this worker's condition is her heightened sensitivity to a variety of substances that do not usually cause adverse reactions in people who do not have this illness. Since the worker is already sensitive, the initial exposure need not be repeated in order to see the symptoms re-appear.

A claim for ES can also be accepted as an occupational illness linked to the specific risks inherent to the applicant's work (Article 30 of LATMP)

- ***Moreau vs. Val d'Or School Board***, CLPE, 2002LP-44 (Pierre Prigent)

The Commission first noted that the worker had been exposed daily to fumes from chemical products at work, without any kind of protection, for over twenty years. It also noted he had various symptoms that were similar to those of people diagnosed with MCS according to the medical literature cited. Considering that he had no other medical condition that could cause all the symptoms described, that he did not suffer from a psychiatric illness, that he had not been exposed to irritant chemical products elsewhere and that he had the same symptoms whenever he involuntarily exposed himself to products like those at his workplace, the Commission concluded that the evidence, both factual and medical, sufficed to show that the worker had an illness linked to the particular risks associated with his job and that he therefore had an occupational illness.

The following claims have been accepted on the basis of occupational illnesses, upon first request, by the CSST in some cases, and by the CLP in other cases:

- **Carter vs. Primetech Électroniques Inc. vs. CSST**, CLP 140851-60-0006, March 6, 2003 (Mireille Zigby)
- **Serigraffiti Inc. vs. Cayouette**, CLP, 148264-70-0010 and 148802-70-0010, February 13, 2002 (Mireille Zigby)
- **Lemoy vs. Lithi Associates Ltd. vs. CSST**, (2003) CLP 634 (Lina Crochetière)
- **Desgagnés Marin Cargo Inc. vs. Hélène Leclerc**, 2008 QCCLP 5763 (Claude-André Ducharme) confirmed by **Desgagnés Marine Cargo Inc. vs. CLP**, 2009 QCCS 579
- **Morneau vs. Bombardier Aéronautique Inc.**, 2010 QCCLP 2461 (Jean-François Martel)

Can a claim arising from exposure at work be accepted even if no one else became sick after such exposure?

Yes. The aggravation of a pre-existing condition due to work conditions can be considered a work accident or an occupational illness. Therefore, pre-existing individual susceptibility in anyone made sick by their work is not necessarily an obstacle to the recognition of a work accident in an occupational illness. This is called the “Thin Skull Rule”.

- **Morneau vs. Bombardier Aéronautique Inc.**, 2010 QCCLP 2461 (Jean-François Martel)

The worker’s personal predisposition to chemical sensitivity cannot be considered an obstacle to the recognition of an occupational illness because a direct link has been shown between the illness and the risks inherent in her work. Even if we acknowledge the fact that the worker’s personal susceptibility played a role in the development of her illness, we must admit that she functioned adequately for several years before her exposure to toxic products at work produced its full effect. In a case like this, her exposure at work probably exacerbated her sensitivity, strongly deteriorated her health and finally disabled her. From then on, the risks inherent in her work at the very least deteriorated her pre-existing condition or made her symptomatic. That constitutes an occupational illness.

In theory, the employer is liable for all costs incurred due to a work accident or an occupational illness. However, in the case of benefits for a worker with a greater personal susceptibility than average, the employer may request that these costs be shared. If we refer to the case of an employer who was granted cost-sharing for a worker on precautionary work cessation due to sensitivity to a cleaning product used at her workplace, we would think that an employer could ask for such cost-sharing for an employee suffering from environmental sensitivities (a measure that can sometimes facilitate settlement of the case).¹¹

- ***Laval Hospital vs. Tremblay***, (2006) QCCLP 344

In this case, cost-sharing was granted for the precautionary work cessation of a nursing aid who became sensitive to 'Zoclor', a cleaning product used by hospital maintenance staff. The evidence showed that the level of chlorine to which maintenance employees were exposed when using 'Zoclor' was very low and barely perceptible. However, the worker was still entitled to precautionary work cessation for exposure to a contaminant, because she was symptomatic even when exposed to very low doses of the product.

That being said, the simple manifestation of a personal condition at work does not in itself guarantee acceptance of a claim for occupational illness.

- ***Labbé vs. Robert & Fils Québec Inc.***, 2007 QCCLP 1507 (Mireille Zigby)

This worker is a therapeutic oil conditioning clerk. She had skin lesions and respiratory problems which her doctors linked to the products used at work. She deposited a claim for occupational illness due to allergic sensitivity or, if that diagnosis could not be accepted, multiple chemical sensitivity. The Commission first noted the presence of respiratory symptoms not only when the worker was in contact with certain smells or irritant substances at work, but also outside of work, namely in the presence of animals or after taking certain drugs. The Commission therefore concluded that the symptomatic episode upon which the worker based her claim was simply an additional manifestation of her personal condition. The Commission therefore refused to conclude that the worker's sensitivity was of occupational origin.

¹¹ According to Article 329 of the LATMP, "If a worker is already handicapped when the occupational illness occurs, the Commission may of its own volition, or upon the employer's request, charge all or part of the benefit costs to the employers of all units concerned." For an example of such a case, see *Les Silos Port-Cartier and CSST*, (2003) AZ-50212231 (CLP). In addition, according to Article 326 of the same law, "The Commission charges to the employer the cost of benefits payable for an accident that occurred while the worker was in his employment. Employers targeted. It may also of its own volition, or upon the employer's request, charge such costs to employers of one, several or all units whenever the costs charged in accordance with the first paragraph would result in an employer's unfairly bearing the costs of benefits for a work accident caused by a third party or in bearing an unfair debt load...".

What happens if your symptoms reappear after you had regained your capacities, and you are again unable to work or follow a rehabilitation program?

If your environmental sensitivity again renders you unfit to work or follow a rehabilitation program, after your initial condition has been recognized by the CSST, you can submit a new claim for “relapse, recurrence or deterioration”.

- **Côté vs. Pulvérisateur MS Inc.**, 2011 QCCLP 3169

This worker was an industrial painter suffering from chronic rhinitis that was recognized by the Commission as being work-related. Two years after his first claim was accepted, the worker noted a gradual but considerable increase in the intensity of his symptoms, which according to his doctor, was due to the aftermath of his occupational illness. The worker is now sensitive to all irritant products. He asked that this diagnosis be recognized as a relapse, recurrence or deterioration of his occupational illness. The Commission first noted from the evidence that the worker’s increase in symptoms appeared concomitantly with the change of location where he received training for his rehabilitation program. Considering the gravity of his original illness, his medical follow-up, the presence of permanent and serious impairment and the continuation and compatibility of his symptoms, the Commission then concluded that the evidence proved a marked deterioration of the worker’s condition related to his occupational illness. It therefore accepted his claim and ruled that he had a relapse, recurrence or deterioration of his original illness.

Today are all claims for environmental sensitivity accepted by the CSST?

No, every case is different. For example, due to the lack of clear medical data on diagnostic and treatment methods for environmental sensitivities as well as lack of precise information on the mechanisms that produce the symptoms, the applicant’s testimony is crucial in determining the link between the illness and the work. The Commission sometimes rejects claims made by people with environmental sensitivities, saying, among other things, that the illness could not be shown or proven by specific tests. In such cases, it must first be determined whether the Commission found the worker’s testimony credible.

- **Compagnie A vs. R.J.**, 2008 QCCLP 6510 (Martine Montplaisir)

The Commission considered the worker’s testimony unconvincing because it was contradicted by the current documentary evidence. In addition, the Commission noted that the version of the facts at the workplace changed over a period of some months. It also noted that the worker did not seem genuine, that the presentation was overdone, that the story and comments were sometimes contradictory and that the symptoms repeated to various health professionals varied. Claim refused.

- **Côté vs. *Pulvérisateur MS Inc.***, 2011 QCCLP 3169

This worker testified calmly, precisely, with conviction and without exaggeration, though at times with a hint of bitterness and exasperation in his voice due to the consequences of his original occupational illness, which made him all the more credible. That is why the Commission considered his testimony trustworthy and to the point, especially since it corresponded with the medical information contained in the extensive documentary proof. Claim accepted.

Do other diagnoses have a better chance of being accepted by the CSST?

People with a diagnosis of environmental sensitivities have often received other diagnoses as well from their own doctors or from the doctors of their employer or the CSST (rhinitis, laryngitis, intoxication). In many of these cases, the claim is accepted for a different diagnosis than environmental sensitivities. If such a diagnosis can give rise to benefits in the short term, that is obviously an advantage for the person concerned.

There is often less medical controversy when it comes to recognizing a diagnosis for symptoms affecting a single area of the body (such as rhinitis). However, if such a diagnosis does not reflect as serious consequences on quality of life as environmental sensitivities has, it can also lead to lower benefits.

- **Hould vs. *Demathieu & Bard – Cergerco s.e.n.c.***, 2011 QCCLP 5389

This worker was exposed to mould in a trailer in which he was living on a construction site where he worked as a heavy equipment operator in a distant area. He had a variety of symptoms and had to stop working between May 29, 2006 and May 25, 2010. According to the special committee of the presidents of CSST committees on pulmonary occupational illnesses, “the mould levels found on the work premises were not sufficiently high to explain the worker’s symptoms”. Nonetheless, the Commission declared that, like several other workers who lived in that trailer, the worker had an occupational illness. The diagnoses accepted, however, were rhinitis, laryngitis and pharyngitis, unlike the diagnosis of the worker’s personal doctor, who believed that he had mycotoxicosis with various systemic impairments (chronic fatigue, sinusitis, dermatitis, muscular pain, folliculitis, depression, anxiety, fibromyalgia and chronic rhinitis). As a result, the Commission ruled that the worker’s illness was consolidated as of January 23, 2007 and that he had no permanent impairment or work limitation related to his rhinitis, laryngitis and pharyngitis. The worker therefore was not compensated for the period up to May 25, 2010.

What happens once the claim is accepted?

Once environmental sensitivity is recognized as an occupational illness or an illness caused by a work accident, the applicant is entitled to all the benefits provided by law. These benefits include income replacement compensation up to 90% of the worker's net salary, which is paid until the illness is believed to be consolidated (i.e., the worker is cured or no other treatment is likely to improve his condition).

Once the doctor decides the illness (environmental sensitivities) is consolidated, he must decide if the patient has permanent physical or psychological impairment, and if so, to what degree, according to an official document called the Table of Bodily Damages (*Barème des dommages corporels*). A lump sum allotted for bodily damages is calculated according to the person's age and degree of impairment. This Table of Bodily Damages is not really adapted to illnesses like environmental sensitivities, however, and the percentage given for impairment due to environmental sensitivities is often relatively low – about 3%, for sensitivity. Nonetheless, a few decisions lead us to believe that a higher percentage could be allotted for various symptoms.

- **Moreau vs. Val d'Or School Board**, CLPE 2002LP-44 (Pierre Prigent)
10% permanent impairment: (Sensitivity - 3%) (Internal nose - local trophic disorders - 1%) (Internal nose - remote trophic disorders – 1%) (Migraines – 5%)
- **Serigrafitti Inc. vs. Cayouette**, CLP, 148264-70-0010 and 148802-70-0010, February 13, 2002 (Mireille Zigby)
Permanent impairment of 3.3%: (Sensitivity – 3%) (Pain and loss of quality of life – 0.3%)
- **Côté vs. Pulvérisateur MS Inc.**, 2011 QCCLP 3169
Permanent impairment of 14.5%: (Sensitivity – 3%) (Internal nose, bilateral air flow disorder - 3%) (Objectified color vision disturbance – 0.5%) (1%) (Objectified anosmia – 5%) (Local trophic disorders – 1%) (Remote trophic disorders – 1%)

Other doctors have also recognized a degree of impairment for related conditions such as rhinitis.

- **Labbé vs. Robert & Fils Québec Inc.**, 2007 QCCLP 1507 (Mireille Zigby)
Permanent impairment of 3%: (sensitivity)

People with environmental sensitivities have to make radical changes to their way of life. Will the CSST take that into account when deciding if the person should go back to work?

For people with environmental sensitivities, a crucial step in the claim process is the identification of their work limitations by their doctor. The following limitations were recognized by doctors with regard to environmental sensitivities:

- “The limitations that should be respected are to avoid exposing the worker to substances to which she is allergic and ensure that she works in a controlled environment.” **Carter vs. Primeteck Électroniques Inc. vs. CSST**, CLP 140851-62-0006-R, March 6, 2003 (Mireille Zigby)
- “The suggested limitations - that the worker no longer be exposed to the smell of solvents at her workplace - are necessary in order to avoid recurrences. **Serigrafitti Inc. vs. Cayouette**, CLP, 148264-70-0010 and 148802-70-0010, February 13, 2002 (Mireille Zigby)
- “The worker should no longer be exposed to chemical agents, especially irritant ones.” **Moreau vs. Val d’Or School Board**, CLPE 2002LP-44 (Pierre Prigent)
- “The worker can no longer be exposed directly or indirectly to the products that cause her symptoms, namely ethyl cyanoacrylate and dimethyl-p-toluidine.” **Aubin vs. Systèmes de Sécurité Paradoc Ltd.**, 2009 QCCLP 6145.

The degree of permanent impairment, the type of work limitations that are recognized as well as the exposure to triggering products at the workplace determine if someone with environmental sensitivities can resume their functions. If they are unable to do so, they can follow a physical, social and work rehabilitation program. They receive income replacement compensation until they are deemed able to return to work. They then continue to receive benefits while they are searching for work, for a maximum period of one year. Once they have found an appropriate job, or after one year, when they are presumed to have found one, the benefits are reduced accordingly.

The appropriate job can be at the worker’s home. However, the need to work in a controlled environment does not automatically exclude jobs elsewhere. The type of job that is considered appropriate can be determined jointly with the worker.¹²

¹² For more information on the right to rehabilitation and identification of appropriate work, see Katherine Lippel and Marie-Claire Lefebvre, “La réparation des lésions professionnelles: analyse jurisprudentielle, Éditions Yvon Blais Inc., Cowansville, 2005

- **Carter vs. Primetec Électroniques Inc. vs. CSST**, CLP 140851-62-0006-R. March 6, 2003 (Mireille Zigby)

In its initial decision, the Commission recognized the occupational nature of the worker's illness, that is, sensitivity to multiple chemical products. After analyzing the evidence submitted, the Commission concluded that the worker should not be exposed to substances to which she is allergic and that she should work in a controlled environment. The job of Marketing Interviewer was judged appropriate for her, within the framework of this decision, because according to the initial decision-maker, it could be performed from the worker's home. The worker later requested a revision of this decision, saying that this job was not appropriate because it could not in fact be performed from her home. Upon re-examining the evidence, the Commission concluded that no convincing factors supported the belief that this job could be performed from home. The Commission noted, however, that even though the worker's home was the ideal controlled environment and that it would be best for her to work from home, a controlled environment is not synonymous with work at home. It concluded that the worker and the CSST should work together with an open mind to develop a personalized rehabilitation program, and that the worker could receive the benefits to which she is entitled until she resumes work.

Sensitivity to chemical products can be considered a work limitation subsequent to a more conventional diagnosis like rhinitis or intoxication to solvents or some other irritant product. In that case, the environmental sensitivity must be taken into account when determining an appropriate job.

- **Les Lainages Victor Ltd. vs. Jacques**, 136427-03B-0004 and 1327243-03B-0005, July 15, 2004, (Claude Lavigne)

This worker was an inspector in a fabric manufacturing and processing company. She requested that the Commission recognize her rhinitis as work-related due to an accident in which she was exposed to large quantities of carbon monoxide and gases created by the combustion of sulfuric acid. The Commission concluded that there is in fact evidence of an intoxication to carbon monoxide and sulfuric acid and that this intoxication probably causes most of the worker's symptoms. As far as her work limitations are concerned, the Commission noted that the evidence shows the worker remained sensitive to smells and certain irritant products following her initial rhinitis, to such an extent that she had to avoid exposing herself to neurotoxins and other irritant products. The Commission concluded that the worker could not resume her work until a review was done of the products to be avoided and declared that her sensitivity should be taken into account when determining an appropriate job for her if it was ruled that she could not resume the job she occupied before her illness.

In other cases, however, the Commission recognizes a more conventional diagnosis but refuses to acknowledge that the environmental sensitivity is work-related, saying that it is a personal medical condition. In such cases, the capacity to return to the job occupied before the worker's illness, and consequently, the right to rehabilitation are determined without allowing for the environmental sensitivities. However, even when that is the case, provided the CSST considers that the person is entitled to rehabilitation, the environmental sensitivities can be taken into account as a personal medical condition during the rehabilitation process and identification of an appropriate job.

- ***Labbé vs. Robert & Fils Québec Inc.***, 2007 QCCLP 1507 (Mireille Zigby)

The Commission noted that the analysis of the worker's residual capacity must allow for the physical limitations resulting from any personal medical condition known at the time of her evaluation. Considering her personal medical condition of allergic sensitivity and the fact that she must avoid contact with many substances and smells, the Commission concluded that the job of ticket office clerk is not appropriate for her because she would be in constant contact with the public.

What happens if the person is deemed unable to do any kind of work?

Anyone with a serious case of environmental sensitivities that is recognized as such by the CSST could also be attributed the status of serious and prolonged disability. In such a case, if a worker is unable to do her housework because of her environmental sensitivities, for example, she could be reimbursed for housecleaning expenses.

- ***Côté vs. Pulvérisateur MS Inc.***, 2011 QCCLP 3169

Considering the extensive consequences of the worker's occupational illness, that is, sensitivity to all irritant products, headaches, nausea, intolerance to sound, intolerance to light, dyschromatopsia (dysfunction in the perception of colour), dysgeusia (an impairment of the sense of taste), hyposmia (partial loss of the sense of smell) as well as their consequences on his everyday life, the Commission believed that the worker had obviously suffered serious and permanent bodily impairment due to his occupational illness. The commission noted that prior to his illness, the worker did his housework himself, according to the evidence, and that he would still be doing so otherwise. Under the circumstances, the Commission concluded that the worker was entitled to the reimbursement of regular housecleaning expenses.





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